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In re Application of

OFFICE OF PETITIONS

Goth, et al.

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Application No. 10/718,164

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DECISION ON PETITION

Filed: November 19, 2003

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Attorney Docket No. 155694-0125

This is a decision on the petition under 37 CFR 1.181(a) to withdraw the holding of abandonment, filed November 27, 2006.

The petition under 37 CFR 1.181(a) to withdraw the holding of abandonment is **dismissed**.

This application was held abandoned on March 27, 2005, after it was believed that a proper response was received to the final Office action mailed December 27, 2005. The final Office action allowed a shortened statutory period for reply of three (3) months from its mailing date. Extensions of the time set for reply were available pursuant to 37 CFR 1.136(a). A reply was filed on March 22, 2006. By an Advisory Action mailed April 3, 2006, petitioner was advised that the response of March 22, 2006, failed to place the application in condition for allowance. No additional replies were received within the allowable period. A Notice of Abandonment was mailed October 16, 2006, indicating that a reply to the final Office action was not received.

The instant petition maintains that a Request for Continued Examination (RCE) that is responsive to the final Office action was filed on April 7, 2006. A copy of the RCE containing a certificate of mailing dated April 7, 2006, accompanied the petition. A copy of a postcard also accompanied the petition, but no Office date-stamp was found thereon. Accordingly, the postcard cannot be used as *prima facie* evidence that the RCE was received April 7, 2006. The certificate of mailing can be used, however. It is noted that Ms. Susan Langworthy signed the certificate of mailing. It is noted that a statement of personal knowledge from Ms. Langworthy regarding the mailing of the response did not accompany the petition.

Section 711.03 of the *Manual of Patent Examining Procedure* provides, in pertinent part, that

Where a certificate of mailing under 37 CFR 1.8, but not a postcard receipt, is relied upon in a petition to withdraw the holding of abandonment, see 37 CFR 1.8(b) and MPEP § 512. As stated in 37 CFR 1.8(b)(3) the statement that attests to the previous timely mailing or transmission of the correspondence must be on a personal knowledge basis, or to the satisfaction of the Director of the USPTO. If the statement attesting to the previous timely mailing is not made by the person who signed the Certificate of Mailing (i.e., there is no personal knowledge basis), then the statement attesting to the previous timely mailing should include evidence that supports the conclusion that the correspondence was actually mailed (e.g., copies of

a mailing log establishing that correspondence was mailed for that application). When the correspondence is shown to have been timely filed based on a certificate of mailing, the correspondence is entered into PALM with the actual date of receipt (i.e., the date that the duplicate copy of the papers was filed with the statement under 37 CFR 1.8).

The record reflects that the subject certificate under 37 CFR 1.8 was signed by Susan Langworthy, but that no statement of personal knowledge regarding the timely mailing of the reply accompanied the petition document. It is further noted that the petition document did not explain how Mr. Yorks—who signed the petition document—had firsthand knowledge of the mailing. The evidence provided with the petition is, therefore, insufficient. The petition is dismissed, accordingly. Any renewed petition filed must be accompanied by a statement from Ms. Langworthy or from Mr. Yorks that complies with the guidance cited in MPEP § 711.03 cited above.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
 United States Patent and Trademark Office
 Box 1450
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By facsimile: (571) 273-8300
 Attn: Office of Petitions

Telephone inquiries regarding this decision should be directed to the undersigned (571) 272-3222.



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